IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

[Court's order whether the case is approved for reporting or not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 6778 (SS) of 2001
Old Number
Writ Petition No. 28207 of 1999
(Leading Case)

Sanjai and 18 others. **……Petitioners.**

Versus

Joint Director of Education
and 21 others. **……Respondents**

Along with connected writ petitions.

Approved for reporting

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Not approved for reporting

Date of Decision : May 10, 2007

Initial of Judge

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Old Number
Writ Petition No. 28207 of 1999
(Leading Case)

Sanjai and 18 others. **……Petitioners.**

Versus

Joint Director of Education
and 21 others. **……Respondents**

And

Writ Petition No. 6767 (SS) of 2001

Vijay Nath Giri. **……Petitioner.**

Versus

Joint Director of Education,
Garhwal Mandal,
Pauri Garhwal. **……Respondent.**

And

Writ Petition No. 6777 (SS) of 2001

Sunil Kumar Bahuguna **……Petitioner.**

Versus

Director of Education,
and three others. **……Respondents.**

Writ Petition No. 6780 (SS) of 2001

Shyam Lal Nishad . **……Petitioner.**

Versus

Joint Director of Education,
and three others. **……Respondents.**

Writ Petition No. 6779 (SS) of 2001

Tilak Ram **…….Petitioner.**

Versus

State of Uttarakhand,
and another. **…….Respondents.**

Writ Petition No. 359 (SS) of 2002

Iqbal Ahmad. **…….Petitioner.**

Versus

State of Uttarakhand,
and three others. **……Respondents.**

Hon'ble M.M. Ghildiyal, J

In all these writ petitions common question of law is involved, consequently, all writ petitions are being disposed of by a common judgment.

Writ petition no. 6778 (SS) of 2001 shall be treated as leading case.

Heard Sri B.D. Upadhyay, Sri V.K. Bisht, Sr. Advocate assisted by Sri V.K. Kaparwan and Sri Gopal Narain, learned counsel for the petitioners and Sri H.M. Raturi, learned standing counsel for State of Uttarakhand on behalf of respondents.

By means of this writ petition, the petitioners have prayed for the following reliefs:

a. *Issue an order direction or writ in the nature of Certiorari quashing the orders dated 17.06.1999 (Annexure no 21 to 39 to the writ petition) passed by the Joint Director of Education, Garhwal Division, Pauri Garhwal.*

b. *Issue an order direction or writ in the nature of Mandamus commanding the respondents not to interfere in the working*

of the petitioners on the basis of the impugned orders dated 17.06.1999 and to make the payment of their salary along with entire arrears.

c. *Such other and further order, direction or writ of suitable nature which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

Similar relief is being sought by the petitioners in connected writ petitions.

Vide order dated 17.06.1999 passed by Joint Director of Education, Garhwal Region, Pauri Garhwal, which is the order impugned in the present writ petitions, appointment of petitioners on the post of Assistant Teacher (LT Grade) for various High Schools and Intermediate Colleges was cancelled.

The stand of the petitioners is that an advertisement was issued by the respondent on 20.10.1997 inviting applications for the post of Assistant Teacher (LT Grade) for various High Schools and Intermediate Colleges of the then Uttarakhand region of Uttar Pradesh. Total number of posts, for which applications were invited, was 532. In pursuance to the advertisement, petitioners submitted their applications and their candidatures were considered by the Divisional Departmental Selection Committee, which prepared the select list of 434 candidates including the petitioners. Thereafter, petitioners were issued appointment letters on 18.11.1998. In pursuance to the appointment letter, petitioners joined their respective Institutes where they were posted and continuously discharging their duties without any break.

On 17.06.1999, Joint Director of Education, Garhwal Region, Pauri passed an order canceling the appointments of

the petitioners on the ground that selection was not made in accordance with U.P. Subordinate Education (Trained Graduate Grade) Service Rules, 1983.

Aggrieved with this order, petitioners preferred writ petitions before Allahabad High Court and Allahabad High Court, in Writ Petition no. 28207 of 1999, new number W.P. No. 6778 (SS) of 2001 (in State of Uttarakhand) on 23.08.1999 stayed the operation of impugned order dated 17.06.1999 by which the appointment of petitioners was cancelled. Similar order was passed in other connected writ petitions by Allahabad High Court. Since then, petitioners are working on their posts.

Impugned order has been challenged by the petitioners mainly ground that prior to canceling the appointment orders of the petitioners no opportunity of hearing was given to the petitioners though their appointments were made in accordance with law and there was no illegality or irregularity in making appointment of the petitioners on the post of Assistant teacher (LT Grade).

From perusal of record, it appears that applications for 532 posts of Assistant Teacher (LT Grade) were invited. 434 persons including the petitioners were selected by Joint Director of Education. After receiving complaints from some quarter against Joint Director of Education, inquiry was conducted by the State Government and appointment of 434 was cancelled on 17.06.1999 and on the very next dated i.e. on 18.06.1999 out of 434 candidates 381 candidates were given re-appointment.

It is strange enough to know that applications for 532 posts of Assistant Teacher (LT Grade) were invited, however,

respondents have made appointment of 1114 candidates on the post of Assistant Teacher (LT Grade) and the justification for this is given by the respondents in the counter affidavit that it was stated in the advertisement that number of posts may be increased or decreased.

Generally, in the advertisement it is mentioned that number of posts may increase or decrease. It may increase or decrease upto extent of 1 %, 2% or at the most 5% but it may not increase or decrease more than 100%.

It is not disputed by the respondents in the counter affidavit that opportunity of hearing was not afforded to the petitioners prior to canceling their appointment orders. On the contrary the stand of the respondents is that opportunity of hearing was not at all required to be given to the petitioners.

Some of the candidates have been given re-appointment by the Joint Director of Education. One of the candidates, who did not get re-appointment filed writ petition no. 35374 of 1999 (Devendra Singh Vs. State of U.P. and others) before Allahabad High Court and the Allahabad High Court on 21.08.1999 allowed the writ petition on the sole ground that petitioner was not afforded opportunity of hearing prior to canceling the appointment order.

Learned counsel for the petitioners has further placed reliance on the judgment and order passed by Hon'ble Supreme Court in the case of Shrawan Kumar Jha Vs. State of Bihar reported in 1991 AIR SC page 309 wherein the Hon'ble Supreme Court has held that appellants should have been given opportunity of hearing before canceling their appointments.

Admittedly, in the present case also no such opportunity was afforded to the petitioners. It is well settled law that no order to the detriment of the petitioners could be passed without complying with Rules of natural justice.

For the reasons recorded above, writ petitions are allowed. Impugned order dated 17.06.1999 is hereby quashed. No order as costs.

(M.M. Ghildiyal, J)

May 10, 2007
SKSharma